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EXAMINER
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PAULSON, SHEETAL R.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT SCOTT ACKERSON,  
BRIAN ROBERT CARTER, and CLAY PATTERSON

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Appeal 2016-001264<sup>1</sup>  
Application 13/191,011<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, AMEE A. SHAH, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 5–8. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our Decision references Appellants' Appeal Brief ("Br.," filed July 8, 2015), the Examiner's Answer ("Ans.," mailed October 26, 2015), and Final Office Action ("Final Act.," mailed January 16, 2015).

<sup>2</sup> Appellants identify Cerner Innovation, Inc., as the real party in interest (Br. 4).

## CLAIMED INVENTION

Appellants' claims relate generally "to patient and provider communication interfaces" (Spec. ¶ 2).

Claim 5 is the only independent claim on appeal. Claim 5, reproduced below with minor formatting changes and added bracketed notations, is illustrative of the subject matter on appeal:

5. A computerized method carried out by a server having at least one processor for providing health feeds for a patient and one or more family members of the patient that include information generated by third party software applications, the method comprising:

[a] receiving provider inputs regarding the patient or the one or more family members of the patient;

[b] storing the provider inputs;

[c] determining, using the provider inputs, provider information to display to the patient or the one or more family members of the patient as a first health feed;

[d] receiving patient inputs for the patient or the one or more family members of the patient;

[e] storing the patient inputs;

[f] determining, using the patient inputs, patient information to display to the patient or the one or more family members of the patient as a second health feed;

[g] receiving authorization from the patient or the one or more family members of the patient to allow a plurality of third-party software applications, subscribed to by the patient or the one or more family members of the patient, access to the provider inputs and the patient inputs, wherein each third-party software application of the plurality of third-party software applications is administered by a different third party;

[h] based on receiving the authorization, granting the each of the plurality of third-party software applications access to the provider inputs and the patient inputs;

[i] receiving from the each of the plurality of third-party software applications sets of patient-specific information or family member-specific information automatically generated by

the each of the plurality of third-party software applications using the provider inputs and the patient inputs;

[j] storing each of the sets of patient-specific information or the family member-specific information generated by the each of the plurality of third-party software applications;

[k] determining at least one set of the sets of patient-specific information or the family member-specific information to display as a third health feed display; and

[l] simultaneously displaying on a single user interface a plurality of selectable options, at least a first selectable option of the plurality of selectable options corresponding to the patient and at least a second selectable option of the plurality of selectable options corresponding to the one or more family members of the patient, wherein selection of at least one of the plurality of selectable options initiates the simultaneous display of the first health feed display, the second health feed display, and the third health feed display to the patient or the one or more family members of the patient.

### REJECTION<sup>3</sup>

Claims 5–8 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.<sup>4</sup>

### ANALYSIS

Appellants argue claims 5–8 as a group (*see* Br. 6–14). We select claim 5 as representative. Claims 6–8 stand or fall with independent claim 5. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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<sup>3</sup> In an Advisory Action, mailed June 17, 2015, the Examiner withdrew a nonstatutory double patenting rejection in response to Appellants' Terminal Disclaimer, filed May 13, 2015 (*see* Ans. 3–5).

<sup>4</sup> Appellants cancelled claims 1–4 in an After-Final Claims Amendment, filed May 13, 2015 (*see* Br. 1), and entered by Advisory Action mailed June 17, 2015.

*Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

The “directed to” inquiry []cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo*, 132 S. Ct. at 1293 (“For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.”) Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1375 [] (Fed. Cir. 2016) (inquiring into “the focus of the claimed advance over the prior art”).

*Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). “The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see also Enfish*, 822 F.3d at 1335.

In rejecting claims 5–8, the Examiner finds the claims are directed to “the abstract idea of on-line healthcare communication” (Final Act. 2), and when viewed as a whole, the claims do not provide meaningful limitations “that transform the exception into a patent eligible application such that the

claim amounts to significantly more than the exception itself” (*id.*). In the Answer, the Examiner finds more particularly that “the claims are directed to the abstract idea of displaying health care data to different parties using electronic communication, which is analogous to the abstract idea example of using categories to organize, store, and transmit information” (Ans. 6).<sup>5</sup>

Appellants argue that the Examiner errs in rejecting claims 5–8 as directed to ineligible subject matter because the Examiner “has provided no rationale or supporting documentation in support of its conclusion that the elements recited in each of the claims, both independent and dependent, amount to an abstract idea, the patenting of which would preempt all implementations of ‘on-line healthcare communication’” (Br. 6–7). More particularly, Appellants argue that “the present claims are not directed to an abstract idea” because the Examiner’s “characterization of the abstract idea is overly broad and ignores the limitations in the claims” (*id.* at 8–9). However, we agree with the Examiner that the claims are directed broadly to the abstract idea of “displaying health care data to different parties using electronic communication” (*see* Ans. 6; *cf.* Final Act. 2). And, to the extent Appellants argue that the Examiner erred in adequately supporting this determination by providing analysis (*see* Br. 6–10), Appellants’ argument is unpersuasive.

There is no requirement that the Examiners must provide evidentiary support in every case before a conclusion can be made that a claim is

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<sup>5</sup> We note that “an abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). The Examiner’s “slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* at 1241.

directed to an abstract idea. *See, e.g.*, para. IV “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be *a question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.”) (Emphasis added). We agree that evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. Based on the above analysis set forth by the Examiner, we are unpersuaded it is necessary in this case.

Instead, we need only look to other decisions where similar concepts were previously found abstract by the courts. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”)

To that end, as noted above, the Examiner finds the claims are directed to “the abstract idea of on-line healthcare communication” (Final Act. 2), and more particularly, “the claims are directed to the abstract idea of displaying health care data to different parties using electronic communication, which is analogous to the abstract idea example of using categories to organize, store, and transmit information” (Ans. 6).

Broadly, we agree that the Examiner is correct. According to Appellants' Specification, "[t]he present disclosure relates to patient and provider communication interfaces" (Spec. ¶ 2). The Specification observes that

[c]ommunication between patients and their providers is often limited to in-person or telephone interactions. Patients may keep records of their own health observations but lack the means to share this information with providers. Providers keep records of patient information that are not available to patients. However, it may be helpful for patients to have access to provider information. Access to both types of information may lead to insights into a patient's behaviors and health.

(*Id.* ¶ 3). To address these limitations, the Specification identifies

[a] graphical user interface [that] provides a clinical feed with provider content and a patient feed with patient content so that either/both the provider and the patient may access each other's contributions to the health care record. Additional feeds that may be displayed include an information feed from a peripheral device or a third-party feed. The additional feeds may further incorporate information provided by the patient and/or clinical feed.

(*Id.* ¶ 4). And, taking independent claim 1 as representative, the claimed subject matter is generally directed to "[a] computerized method . . . for providing health feeds for a patient and one or more family members of the patient that include information generated by third party software applications" which includes steps for "receiving provider inputs," "storing the provider inputs," "determining, using the provider inputs, provider information to display . . . as a first health feed," "receiving patient inputs," "storing the patient inputs," "determining, using the patient inputs, patient information to display . . . as a second health feed," "receiving authorization . . . to allow . . . third-party software applications . . . access to the provider inputs and the patient inputs," "based on receiving the



authorization, granting . . . access to the provider inputs and the patient inputs,” “receiving [information automatically generated] from the each of the plurality of third-party software applications sets of patient-specific information . . . using the provider inputs and the patient inputs,” “storing each of the sets of patient-specific information,” “determining at least one set of the sets of patient-specific information . . . to display as a third health feed display,” and “simultaneously displaying on a single user interface a plurality of selectable options . . . wherein selection of at least one of the plurality of selectable options initiates the simultaneous display of the first[, second, and third health] feed display[s].”

In this regard, the concept of “displaying health care data to different parties using electronic communication” to which claim 5 has been found to be directed to is similar to the steps that the Federal Circuit determined were patent ineligible in *Electric Power*. In *Electric Power*, the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results. *Elec. Power Grp. LLC*, 830 F.3d at 1351–52. The Federal Circuit held that the claims were directed to an abstract idea, explaining that “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

More recently, the concept of “using an electronic device to obtain clinical trial data that would otherwise be collected by pen-and-paper diary, and analyzing the data to decide whether to prompt action” was found to be an abstract idea. *eResearchTechnology, Inc. v. CRF, Inc.*, 186 F.Supp.3d

463, 473 (W.D.Pa. 2016), *aff'd.*, No. 2016–2281, 2017 WL 1033672 (mem) (Fed. Cir. Mar. 17, 2017) (citing *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1361–62 (Fed. Cir. 2015)).

Accordingly, we find that independent claim 5 involves nothing more than receiving data, i.e., “provider inputs,” “patient inputs,” “patient-specific information,” storing data, determining whether to display the data, and displaying the different data simultaneously on a single display — activities squarely within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC*, 830 F.3d at 1353–54 (when “the focus of the asserted claims” is “on collecting information, analyzing it, and displaying certain results of the collection and analysis,” the claims are directed to an abstract idea). *See also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” not patent eligible).

Step two is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (alteration in original) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)).

And, similar to the situation in *Electric Power*, we find nothing sufficient to remove the claims from the class of subject matter ineligible for patenting. As the court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does

nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1355.

Here, as the Examiner points out, independent claim 5 uses generic computer components “to perform generic computer functions (i.e. receiving, storing, determining, displaying, etc.) that are well-understood, routine, and conventional activities previously known to the pertinent industry” (Ans. 6). Thus, the steps recited by independent claim 5 amount to nothing more than mere instructions to implement the abstract idea on a computer—none of which add inventiveness because they merely require the application of conventional, well-known analytical steps. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (“[T]he claimed sequence of steps comprises only ‘conventional steps, specified at a high level of generality,’ which is insufficient to supply an ‘inventive concept.’”) (citing *Alice*, 134 S. Ct. at 2357) (internal citations omitted).

There is no indication in the record that any specialized computer hardware or other “inventive” computer components are required. In fact, the Specification discloses that its “computing environment 100 comprises a general purpose computing device in the form of a control server 102” (Spec. ¶ 21) and its “graphical user interface may be operational with numerous other general purpose or special purpose computing system environments or configuration” (*id.* ¶ 19). Thus, each limitation does no more than require a generic computer to perform generic computer functions.

And, considered as an ordered combination, the computer components of Appellants’ independent claim 5 add nothing that is not already present

when the limitations are considered separately. Viewed as a whole, Appellants' claims simply recite the concept of "displaying health care data to different parties using electronic communication" as performed by "a server having at least one processor" (*see* Br. 15–16 (Claims App'x.)). The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of "displaying health care data to different parties using electronic communication," i.e., receiving data, storing data, determining whether to display the data, and displaying the data, which under our precedents, is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Appellants also argue that "the claims of the present Application include elements or computer functions that are not well-understood, routine and conventional in the field, as evidenced by the absence of prior-art-based rejections" (Br. 11 (citing Final Act. 5)). However, to the extent Appellants argue that the claims necessarily contain an "inventive concept" based on their alleged novelty and non-obviousness over the cited references (*see* Br. 10–12), Appellants misapprehend the controlling precedent. That is, although the second step in the *Alice/Mayo* framework is termed a search for an "inventive concept," the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for "an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*,

134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Appellants further argue that independent claim 5 does not merely utilize a generic computer to, for example, “determin[e] provider, patient, and third-party patient information to display as health feeds;” but rather, “the recited processor and memory must be programmed to perform this specific function, making the computer a special-purpose computer that is programmed in a special way” (Br. 11–12). However, Appellants’ argument is not persuasive because Appellants have not provided evidence that their programming entails anything atypical from conventional programming. And, as the Federal Circuit stated: “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

We also are not persuaded of Examiner error by Appellants’ argument that

the instant claims pose no comparable risk of pre-emption because Appellants have not claimed “on-line healthcare communication,” but rather have applied the abstract concepts, present in all claims, into a specific new and useful application requiring specific limitations directed to determining information to include in different health feeds based on provider inputs, patient inputs, and information generated by third-party software application, presenting selectable options corresponding to the patient and members of the patient's family, and simultaneously displaying the three health feeds upon selection of an option.

(Br. 13). There is no dispute that the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice*,

134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). Yet although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In view of the foregoing, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claim 5, and claims 6–8, which fall with independent claim 5.

#### DECISION

The Examiner’s rejection of claims 5–8 under 35 U.S.C. § 101 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED